

Applicant : Khosravi, et al.  
Appl. No. : 09/427,260  
Examiner : B. Pelegrino  
Docket No. : 702563.4004

### **Remarks**

Claims 29-30, 55-57, and 59,60 and 62 are pending. All pending claims are under 35 U.S.C. § 102(e) over either Fogarty '520, and claims 29, 30, 56, and 60 were rejected under 35 U.S.C. § 103(a). By this amendment, claims 59 and 62 are amended, and claim 61 is cancelled.

Applicant respectfully requests consideration of the application and claims in view of the present amendment, the following Remarks, and the expert testimony of Eric Leopold contained in the Rule 132 Declaration submitted previously.

### **Claim Rejections – 35 U.S.C. § 102(e) based upon Fogarty**

The Examiner's rejection of claims 55, 57, 59, and 62 as anticipated by United States Patent No. 5,800,520 to Fogarty et al. does not apply to the amended claims. A feature of the present invention provides an undulating portion of the wing-like element between the connector between each poll and a looped end that connects longitudinally adjacent cells.

Although an "undulation" might be argued to exist at the bridge element of Fogarty, there are no undulations between discrete connecting structures and the pending claim 55 recites structural elements that are not disclosed, taught, or suggested by the Fogarty patent. As amended, claim 55 recites.

each of said wing-like elements comprising first and second members having undulations between a looped end thereof and a peripheral connector element joining each of the plurality of stretchable cells...

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By dependence, this limitation is also contained in claim 56 and 57.

Claim 59 is amended to recite:

wherein each stretchable element comprises a pair of peripherally expandable wing-like elements extending generally parallel to the longitudinal axis, each of said wing-like elements comprising first and second members having undulations and being connected to a longitudinally adjacent wing-like element at a looped end thereof.

Claim 62 also contains this limitation due to its dependence on claim 59.

As noted previously, the Fogarty et al. '520 patent describes and illustrates stents having generally straight struts, and therefore does not disclose, teach or suggest the claimed undulations of the "wing-like elements nor the connection to adjacent elements as claimed extending generally parallel to the longitudinal axis." The Examiner has previously noted the disclosure of "serpentine elements" of Fogarty among other structures, but Fogarty does not disclose the interrelated nature of the structures nor their interconnection at looped ends as claimed.

For these reasons, Applicants respectfully request reconsideration and withdrawal of this basis for rejection of claims 55-57, 59, 60 and 62.

Claim Rejections – 35 U.S.C. § 102(e) based upon Khosravi

The Examiner rejected each pending claim over USP 5,824,054 to Khosravi et al. ("Khosravi '054"). Applicants respectfully request reconsideration and withdrawal of this rejection. The amendments to claims 55 and 59, recited above, that distinguish Fogarty '520 apply with equal force to Khosravi.

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Claim 29 is amended to recite:

wherein each stretchable element comprises a pair of peripherally expandable wing-like elements extending generally parallel to the longitudinal axis and connected to a longitudinally adjacent wing-like element at a looped end therefor.

The Khosravi '054 patent fails to teach the claimed stretchable element of peripherally expandable wing-like elements, and connection at looped ends as claimed.

For these reasons, Applicants respectfully request reconsideration and withdrawal of the rejections of all the claims based upon the Khosravi '054 patent.

#### Claim Rejections – 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 29, 30, 56 and 60 for obviousness over the Fogarty patent in view of U.S. Patent No. 5,441,515 ("the Khosravi '515 patent"). Applicant requests reconsideration and withdrawal of these rejections.

Applicant has traversed the pending rejection of claims under anticipation by reciting structures that are absent from the cited references. Thus the claims, as amended, recite structural limitations that are not disclosed, taught, or suggested by Fogarty '520, Khosravi '054 or '515. Because none of these patents can supply the missing claimed subject matter, the issue is no longer whether a person of skill in the art would be motivated to combine the disparate teachings of these three patents in the manner done by the Examiner, but rather, the fact that obviousness cannot be established by combining or modifying the teachings of the prior art because even the combination of the references fails the standard for establishing a prima facie case of obviousness because even the

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combination fails to recite a claim that contains material limitations of the present claimed invention. Thus, a prima facie case of obviousness, cannot be made on the basis of the content of these references.

### CONCLUSION

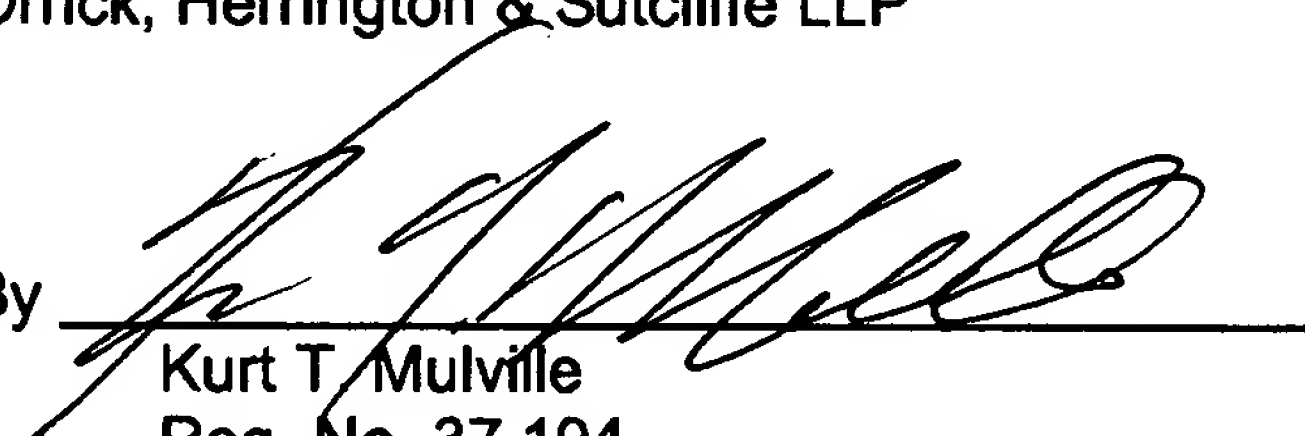
In view of the foregoing, it is submitted that the claims presented in this application define patentable subject matter over the cited prior art. Accordingly, reconsideration and allowance of the application is requested.

Respectfully submitted,

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